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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	CC Docket No. 93-193
1993 Annual Access	)	Elkhart Telephone Company, Inc.
Tariff Filings	)	Tariff F.C.C. No. 1
	)	Transmittal Nos. 41, 44 and 45
GSF Order Compliance	)	United Telephone Association, Inc.
Filings	)	Tariff F.C.C. No. 1
	)	Transmittal Nos. 3, 4 and 5
	)	Bay Springs Telephone Co., Inc.
	)	Tariff F.C.C. No. 2
	)	Transmittal Nos. 57, 58 and 59

DIRECT CASE OF
BAY SPRINGS TELEPHONE COMPANY, INC.,
ELKHART TELEPHONE COMPANY, INC.,
UNITED TELEPHONE ASSOCIATION, INC.
AND TEC COMMUNICATIONS SERVICES

Bay Springs Telephone Company, Inc. (Bay Springs), Elkhart Telephone Company, Inc. (Elkhart), United Telephone Association, Inc. (United) and TEC Communications Services, by their attorney and pursuant to the Commission's Memorandum Opinion and Order Suspending Rates and Designating Issues for Investigation hereby submit their direct case.¹

¹ In re 1993 Annual Access Tariff Filings, Memorandum Opinion and Order Suspending Rates and Designating Issues for Investigation, CC Docket No. 93-193, DA 93-762 (released June 23, 1993), Erratum, CC Docket No. 93-193, DA 93-940 (released July 22, 1993) (hereinafter Designation Order).

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List A B C D E

I. Introduction

In the Designation Order the Bureau designated eight issues to be investigated in this proceeding.² The Bureau ordered each local exchange carrier listed in Appendix B to the Designation Order to file a direct case discussing the issues designated for investigation.³ This direct case will be limited in its discussion of issues 6 and 7. The remaining issues are not relevant to the interstate access tariffs filed by Bay Springs, Elkhart and United. Issues 1 through 6 apply only to local exchange carriers subject to price cap regulation. In addition, issue 8 applies solely to Roseville Telephone Company.

Elkhart, Bay Springs, United and TEC Communications Services respectfully request that they be dismissed from this tariff investigation. Elkhart, Bay Springs and United have adjusted their tariff rates to reflect the revised allocation of general support facility investment and related expenses required by Section 69.307 of the Commission's rules, 47 C.F.R. § 69.307, and the Commission's GSF Order.⁴ Furthermore, while TEC Communications Services has prepared tariffs for local exchange carriers, TEC Communications Services is not a local exchange carrier and has not filed its own tariff with the FCC. The Designation Order states that only local

² Id. at ¶ 105.

³ Designation Order at ¶ 112.

⁴ In re Amendment of the Part 69 Allocation of General Support Facility Costs, Report and Order, CC Docket No. 92-222, 8 FCC Rcd 3697 (released May 19, 1993) (hereinafter GSF Order).

exchange carriers are required to file direct cases in this proceeding.⁵

II. Elkhart, Bay Springs and United Have Properly Reallocated General Support Facility Costs in Accordance with the Commission's GSF Order

Elkhart, United and Bay Springs are independent local exchange carriers providing interstate access services in Kansas and Mississippi. They are also Tier 2B companies that have filed interstate access tariffs for their traffic sensitive rates in compliance with Section 61.39 of the Commission's rules, 47 C.F.R. § 61.39, and in accordance with the Commission's decisions in Regulation of Small Telephone Companies, CC Docket No. 86-467, FCC 87-186, 2 FCC Rcd 3811 (released June 29, 1987), modified, Regulation of Small Telephone Companies, CC Docket No. 86-467, DA 88-1408, 3 FCC Rcd 5770 (released September 27, 1988). Under Section 1.773(a)(1)(iii) of the Commission's rules, 47 C.F.R. § 1.773(a)(1)(iii), these interstate access tariffs are considered prima facie lawful and will not be suspended nor investigated by the Commission absent a substantial showing of a high probability that the tariff rates are unlawful.

Issue 6 designated for investigation in this proceeding states: "Have the LECs properly reallocated GSF costs in accordance with the GSF Order?" On June 17, 1993, Elkhart, Bay Springs and United filed tariff revisions that complied with the

⁵ Designation Order at ¶ 112.

Commission's GSF Order.⁶ The Designation Order suspended those tariffs filed pursuant to the GSF Order for one day and imposed an accounting order.⁷

In these tariff filings, Elkhart, Bay Springs and United adjusted their rates by applying the revised allocations required by Section 69.307 of the Commission's rules to their actual historical costs and the historical minutes-of-use that have been actually measured. The tariff rates filed by Elkhart, United and Bay Springs are reasonable and well-supported by actual costs and historical usage and fully comply with the Commission's GSF Order. No evidence has been presented to rebut the presumption of lawfulness that attaches to these streamlined tariff filings. Therefore, Elkhart, United and Bay Springs respectfully urge the Commission to find that their interstate access tariffs fully comply with the Commission's GSF Order and dismiss them from this investigation.

III. LIDB Per Query Charges Should Not Be Assessed Upon Independent Local Exchange Carriers Because the LIDB Per Query Charge is Assigned to the Access Category

Issue 7 designated for investigation states: "To what category or categories should the LIDB per query charges be assigned?"⁸ Elkhart, Bay Springs and United respectfully urge the

⁶ Elkhart Tariff F.C.C. No. 1, Transmittal No. 44; United Tariff F.C.C. No. 1, Transmittal No. 4; and Bays Springs Tariff F.C.C. No. 2, Transmittal No. 58.

⁷ Elkhart Tariff F.C.C. No. 1, Transmittal No. 45; United Tariff F.C.C. No. 1, Transmittal No. 5; and Bays Springs Tariff F.C.C. No. 2, Transmittal No. 59.

⁸ Designation Order at ¶ 105.

carriers' provision of access to validation and billing information.¹¹

The Commission's Report and Order concluded that "tariffed LIDB service will be an adequate vehicle to enable both large and small LECs to discharge their Title II obligations."¹² The Commission also amended Part 69 of its access rules to add a new switched access rate element for "line information database," which will have a transmission sub-element and a query look-up sub-element. These amendments to Part 69 of the Commission's access charge rules are now effective.

On July 9, 1992, Elkhart, Bay Springs and United filed their Petition for Reconsideration and Clarification of the Commission's Report and Order in CC Docket No. 91-115.¹³ The Commission has not acted upon this Petition for Reconsideration and Clarification. In their Petition for Reconsideration and Clarification, Elkhart, Bay Springs and United asked the Commission to clarify that exchange access tariff rates calculated in accordance with Sections 69.120(a) and 69.120(b) are not assessed upon independent local exchange carriers.¹⁴ Elkhart, Bay Springs and United pointed out that they are the primary providers of interstate access services

¹¹ Notice, 6 FCC Rcd at 3510.

¹² Report and Order and Request for Supplemental Comment, CC Docket No. 91-115, 7 FCC Rcd 3528 (1992) (hereinafter Report and Order).

¹³ The Petition for Reconsideration and Clarification appeared on Public Notice on September 4, 1992. 57 Fed. Reg. 40673 (September 4, 1992).

¹⁴ Petition for Reconsideration and Clarification at 5.

to their local exchanges. Interexchange carriers are the customers that order and pay for these exchange access services.

In opposition to this Petition for Reconsideration and Clarification, Southwestern Bell, Ameritech and Bell Atlantic argued that independent local exchange carriers should pay them LIDB access charges and the Part 69 rate elements contained in their interstate access tariffs.¹⁵ Southwestern Bell, Ameritech and Bell Atlantic completely ignore the plain wording of the Commission's rules. The heading for Section 69.5 is "Persons to Be Assessed." Section 69.5(b) clearly states that "carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services."¹⁶ Furthermore, the purpose of Part 69 of the Commission's rules is to "determine the rates interexchange carriers and end users will pay for access to local telephone company facilities used to complete interstate service offerings."¹⁷ The Commission should avoid the application of conflicting interpretations of its Part 69 regulations.¹⁸

¹⁵ Comments of Southwestern Bell at 6, CC Docket No. 91-115, filed September 21, 1992; Opposition of Ameritech at 6, CC Docket No. 91-115, filed September 21, 1992; and Opposition of Bell Atlantic at 1-2, CC Docket No. 91-115, filed September 21, 1992.

¹⁶ 47 C.F.R. § 69.5(b) (emphasis added).

¹⁷ Access Charges; MTS and WATS Market Structure, Third Report and Order, 48 Fed. Reg. 10319, 10321 (March 11, 1983) (emphasis added).

¹⁸ Robertson v. Methow Valley Citizens Council, 109 S.Ct. 1835, 1848 (1989), quoting General Elec. Co. v. Gilbert, 97 S.Ct. 401, 411 (1976).

The plain words of the Commission's Report and Order require the LIDB per query charge to be assigned to the access category. The Commission's Report and Order clearly states that interexchange carriers are the customers of LIDB exchange access service. In describing LIDB access service, the Commission indicated that "this service enables the IXC to, inter alia, transmit queries to LEC databases, such as LIDB, for purposes of calling card validation or third party billing information."¹⁹ The Commission adopted new Part 69 rate elements for LIDB access "for LECs who provide to interexchange carriers (IXCs) access to certain information and services for LEC joint use calling cards."²⁰

IV. Conclusion

Elkhart, Bay Springs, United and TEC Communications Services have responded fully to the issues designated for investigation in this proceeding. This response demonstrates that they have complied with applicable rules and statutes. Elkhart, Bay Springs and United have filed adjustments to their tariff rates based on historical cost and demand data that properly reallocate general support facility costs in accordance with the Commission's GSF Order. These streamlined access tariffs, filed pursuant to Section 61.39 of the Commission's rules, are considered prima facie lawful. TEC Communications Services is not a local exchange carrier and does not file tariffs with the Commission. Accordingly, Bay

¹⁹ Report and Order, 7 FCC Rcd at 3544, n. 182 (emphasis added).

²⁰ Report and Order, 7 FCC Rcd at 3529, ¶ 3 (emphasis added).

Springs, United, Elkhart and TEC Communications Services request that they be dismissed from this investigation.

Elkhart, Bay Springs, United and TEC Communications Services urge the Commission to assign the LIDB per query to the access category. A clear ruling on this issue is needed to ensure that interexchange carriers pay for LIDB access service in the same

CERTIFICATE OF SERVICE

I, James U. Troup, do hereby certify that on the 27th day of July 1993 I have filed an original and seven copies of the foregoing "Direct Case of Bay Springs Telephone Company, Inc., Elkhart Telephone Company, Inc., United Telephone Association, Inc., and TEC Communications Services", with the Acting Secretary of the Federal Communications Commission and have caused to be served a copy by hand-delivery or first-class, U.S. mail, postage prepaid upon the parties listed on the following service list.


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